

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**CIVIL ACTION NO.: 14-CV-1304
14-CV-1307**

JAMES H. FISCHER,
Plaintiff,

v.

**STEPHEN T. FORREST, JR.
SANDRA F. FORREST,
SHANE R. GEBAUER, and BRUSHY
MOUNTAIN BEE FARM, INC.**
Defendants.

**DECLARATION OF SHANE R.
GEBAUER**

1. I am the President of Brushy Mountain Bee Farm, Inc. ("Brushy Mountain").
2. Brushy Mountain does not owe Mr. Fischer any money for orders of Bee-Quick it purchased from him.
3. Brushy Mountain has never had a contract with Mr. Fisher concerning the Bee-Quick product. When Brushy Mountain would order the Bee-Quick product, an employee of Brushy Mountain would send him an email requesting the product.
4. I personally have never had a website that contained any material related to bee keeping or bee supplies.
5. I did not provide or ship anyone Natural Honey Harvester when they ordered Bee-Quick as claimed by Mr. Fischer.
6. An employee of Brushy Mountain or someone hired by Brushy Mountain took the photograph attached hereto as Exhibit A. This photograph was also included with the fume pad in the photograph attached hereto as Exhibit B, which was also taken by an employee of Brushy Mountain or someone hired by Brushy Mountain.
7. Brushy Mountain has not used an image for the medicine shaped bottle of Bee-Quick, similar to the photograph attached hereto as Exhibit C, in any catalog or website advertisement between 2010 to the present.
8. I did not remove any metadata from any photographs Mr. Fischer may have provided to Brushy Mountain and did not remove any copyright notices from any materials Mr. Fischer may have provided.

9. I did not order the creation of website URLs that contained the terms "Fischer" or "Fischer's Bee-Quick" as alleged by Mr. Fischer. When Brushy Mountain switched from the Bee-Quick to the Natural Honey Harvester product, the ad created by Brushy Mountain for the Bee-Quick product was changed, but the URL was mistakenly not changed. Once I learned the URLs contained the words "Fischers" and "Fischers Bee-Quick" I had the URLs changed.

10. In response to Mr. Fischer's letter dated April 5, 2011, attached as Exhibit D, I wrote a response dated April 14, 2011 and attached hereto as Exhibit E. I never received a response by Mr. Fischer to my letter requesting more specificity concerning the copyright and trademark claims.

11. Brushy Mountain did not distribute, import for distribution, or publicly perform any photographs of Mr. Fischer as he has alleged.

12. I did not encourage "The Honey Hole" or "C&T Bee Supply" to use the Natural Honey Harvester ad, and I never assisted "The Honey Hole" or "C&T Bee Supply" in the use of the Natural Honey Harvester ad, if they in fact used the ad as Mr. Fischer claims.

13. On December 10, 2010, Brushy Mountain did not immediately remove the Bee-Quick ad from its website.

14. Exhibit F is a copy of the Bee-Quick ad as it appeared on December 26, 2010 from www.archive.org.

15. The images for Natural Honey Harvester were uploaded to the Brushy Mountain website on January 28, 2011 to replace the Bee-Quick photographs.

16. The 2011 Brushy Mountain catalog contained a listing of new items not found in any of the previous year's catalogs. One item was a book titled "Bee Keeping For Dummies" and another item was 8 Frame Assembled Painted Medium Hive. A customer ordered the book "Bee Keeping For Dummies" on February 4, 2011 and a customer ordered February 3, 2011. Mr. Fischer was on the mailing list for the 2011 catalog.

This the 14 day of April, 2017.

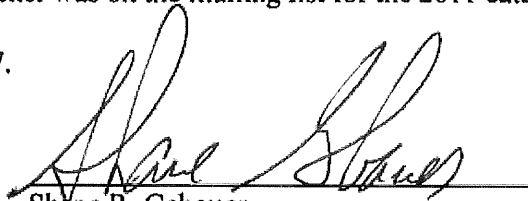
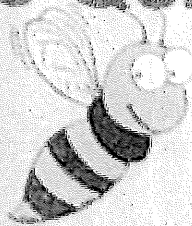

Shane R. Gebauer

Exhibit A

**Fischer's
Bee-Quick**



**Clears supers fast
without foul odors or
chemical residues**

A natural, non-toxic blend
of oils & herbal extracts

No Alcohol

Full refund if not satisfied

FISCHER ALCHEMY
FARMACEDDON, VA
www.bee-quick.com

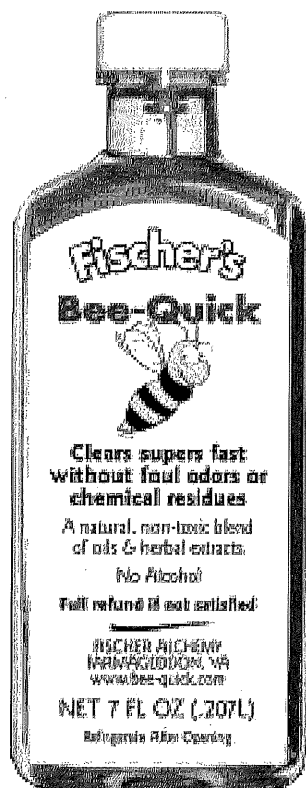
NET 7 FL OZ (.207L)

Refrigerate After Opening

Exhibit B



Exhibit C



[Click Here to go back](#)

Exhibit D

James Fischer

April 5, 2011

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

**Steve Forrest
Brushy Mountain Bee Farm
610 Bethany Church Rd
Moravian Falls, NC 28654**

Re: Infringement of Trademark BEE-QUICK (Registration No 2517553,
Renewal Serial No 85231689)
Infringement of Multiple Copyrights (Registration No 1-560599021)
Misappropriation of Trade Secret Information

Mr Forrest:

I am the owner of the Registered Trademark "BEE-QUICK". Use of this registered mark began in 1999, and has been continuous, covering bee supplies. The mark "BEE-QUICK" carries extensive goodwill and recognition built up by through substantial time and effort in advertising and promotion. The term "BEE-QUICK" is uniquely recognized as referring to goods emanating from James Fischer.

I am also the owner of numerous Copyrights, published from 1999 to present, and registered as a collection of works with the US Copyright Office. These uniquely original copyrighted works have gained substantial value and goodwill in association with the marketing of BEE-QUICK.

Further, I am the owner of numerous Trade Secrets, some which were disclosed to you under your personal assurances of strict confidentiality during your tenure as an Authorized BEE-QUICK Dealer.

It has come to my attention that your company advertises and sells what you call "Natural Honey Harvester". You openly admit in your own catalog to misappropriating Trade Secrets to make this "Knock-Off" of my product.

It has also come to my attention that your company infringes upon several of my uniquely original Copyrighted works, misusing them in the advertising and sales of your infringing product. This constitutes copyright infringement and unfair competition, actionable under federal and state laws.

It has also come to my attention that your company infringes upon my Registered Trademark "BEEQUICK" on your website and in other promotional materials. Accordingly, there is a strong likelihood of confusion, as customers would mistakenly believe that your products emanate from me, or that your products are marketed under my license, authorization, or sponsorship. Your unauthorized, improper use of "BEE-QUICK" constitutes trademark infringement, palming off, dilution and unfair competition, and is actionable under federal and state laws.

Cease and Desist

Page 1 of 2

Exhibit 15 – Plaintiff's cease and desist letter to Defendants (pg 1)

In light of the above, I request that you immediately cease and desist from:

- a) all use of colorable imitations of "BEE-QUICK" as a trademark and trade name;
- b) all use of my Copyrighted works.
- c) all misappropriation and/or use of my Trade Secrets disclosed to you during your term as an Authorized BEE-QUICK Dealer;

You shall notify me in writing within ten (10) days of receipt of this letter that you have done so, and, additionally, provide me with written assurances that you will make no further use of any of my intellectual property in connection with any internet site, products, services, or the dissemination of information in any form. If I must proceed further, I will seek statutory damages, costs, and attorney's fees from you.

Should I fail to hear from you within ten days, I will be compelled to take all necessary legal action to protect my rights and property.

Sincerely,

James Fischer

Cease and Desist

Page 2 of 2

Exhibit 15 – Plaintiff's cease and desist letter to Defendants (pg 2)

Exhibit E



BRUSHY MOUNTAIN BEE FARM, INC.

610 Bethany Church Road, Moravian Falls, NC 28654

PHONE: 1-336-921-3640 • 1-800-233-7929 • FAX: 1-336-921-2681
www.brushymountainbeefarm.com

April 14, 2011

James Fischer



Re: BEE-QUICK Trademark Infringement

Dear Mr. Fischer,

I am writing in response to your request for a Cease and Desist of Brushy Mountain Bee Farm's Natural Honey Harvest. After careful review by our attorney, there does not seem to grounds for your request. If you would like to provide more specific information as to how you believe we may be infringing on your Copyrights or Trademark, we will certainly review that information. However, at this point we shall consider this matter closed.

Regards,

A handwritten signature in cursive script, appearing to read "Shane Gebauer".

Shane Gebauer
General Manager

Exhibit 16 – Employee reply to Plaintiff's cease and desist letter

Exhibit F

INTERNET ARCHIVE
waybackmachine1 capture
26 Dec 2010<http://www.brushymountainbeefarm.com/Fischers-Bee-Quick-8-oz/productinfo/779>

Go

NOV DEC JAN

26

2009 2010 2011

Abol
capture*Brushy Mountain Bee Farm*

• BEST QUALITY • BEST SERVICE • BEST SUPPORT •

Serving the industry for more than 30 years

McAfee SECURE

TESTED DAILY 12-MAY

Items 0 | Sub Total \$0.00

Checkout

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New for 2010

Holiday Gift Ideas

Beekeeping Supplies

Bee-ginner's Kit and Complete
Hives

Protective Clothing

Hive Bodies and Supers

Hive Components

Frames

Foundation

Nails

Beekeeping Tools

Integrated Pest Management (IPM)

Smokers and Smoker Fuel

Medications

Feeders and Feeding Supplies

Pollen and Propolis Traps

Investing

Extracting and Bottling

Jars and Containers

Labels

Wax Processing

Nucs and Swarm Retrieval

Queen Rearing

Comb Honey Supplies

Books/Videos

Educational Tools and Beekeeping
Promotion

Candle Making Supplies

Soap and Skin Care Supplies

Mead and Wine Supplies

Gifts

Monthly Specials

Bargain Aisle - Discontinued and
Scratch/Dent

Fischer's Bee Quick (8 oz)



Item Number: 779

Unit Price: \$12.95

In Stock

Quantity [Bookmark This Page](#)[Refer this page to a friend](#)

Detailed Description

This 100% Natural, non-toxic blend of oils and herb extracts works just like Bee Go and it smells good! Fischer's Bee Quick is a safe, gentle, and pleasant way to harvest your honey. Are you tired of your spouse making you sleep in the garage after using Bee Go? Are you tired of using a hazardous product on the bees you love? Then this is the product for you!



Live Chat by LivePerson

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